

REMARKS/ARGUMENTS

In this amendment, claims 1 and 17 are amended. Support for the amendments to claims 1 and 17 can be found in paragraph [0031], lines 6-11 and Figure 4, S3, of the present specification. Additionally, claim 22 is added. Support for claim 22 is found in at least paragraph [0032] of the specification. No new matter is introduced.

Applicant expresses appreciation for the Examiner's Interview conducted on March 18, 2009, wherein the rejections under 35 U.S.C. 112, first paragraph and second paragraph were discussed. In that interview, several proposed changes to claims 1 and 17 were discussed to make those claims definite and clearly supported by the specification. Additionally, the Examiner acknowledged that claim 12 is clear and definite as currently written. Applicant respectfully requests favorable reconsideration of the pending claims in view of the following remarks.

Claim Rejection – 35 USC § 112

The Office Action rejected claims 1-4, 7-19, and 21 under Section 112, first paragraph, as failing to comply with the written description requirement. According to items 5 and 6 of the Office Action, the limitations added to independent claims 1 and 17 in the Office Action Response of October 7, 2008 were not originally described in the specification. Applicant has amended claims 1 and 17 to delete the word “optionally” and to replace the word “realized” with the word “selected.” Applicant respectfully submits that the present wording “wherein the least data packet amount is selected by rearranging said data packet flows in sequence according to data packet amount” is adequately described in the specification, particularly by paragraph [0031] and S3 of Figure 4. Specifically, paragraph [0031] states that “the data packet flows are rearranged in sequence according to data packet amount Accordingly, a data packet flow having the least data packet amount is selected.” Thus, Applicant respectfully requests withdrawal of this rejection under Section 112, first paragraph.

The Office Action also rejected claims 1-3, 7-19, and 21 under section 112, second paragraph, as being indefinite. According to items 9, 10, and 11 in the Office Action, the amendments added to claims 1, 12, and 17 in the Response of October 7, 2008 were unclear. With respect to claims 1 and 17, Applicant has incorporated the Examiner's suggestions from the

Examiner's Interview. Specifically, to provide the term "wherein the least data packet" with proper antecedent basis, Applicant has placed the word "amount" at the end of the term. Applicant has further replaced the term "realized" with the term "selected." Finally, Applicant has deleted the term "optionally." As a result, Applicant respectfully submits that claims 1 and 17, as well as their dependent claims, are clear and definite under Section 112, second paragraph and requests withdrawal of the rejection.

With respect to claim 12, the Examiner stated during the Examiner's Interview that the claim is clear as written. Specifically, the Examiner stated that when claim 12 is read literally to recite the step of transmitting a broadcast data packet following said first data packet flow (in its entirety) via said first data channel, the claim is clear. Accordingly, Applicant requests that this rejection be withdrawn.

Claim Rejections – 35 USC § 102

The Office Action rejected claims 1-3, 7-19 and 21 under Section 102(e) as being anticipated by Kadambi (U.S. Patent Application Publication No. 20050232274). Applicant respectfully traverses this rejection.

Independent claims 1 and 17 generally recite methods for allocating data packet flows among a plurality of data channels. More specifically, claims 1 and 17 recite "rearranging said data packet flows in sequence according to data packet amount." Accordingly, the skilled artisan will recognize that in claims 1 and 17, the data packet flows are arranged in either an ascending or a descending sequential order, based on their data packet amount. (*See* paragraph [0031] and S3 of Figure 4). This rearranging feature is beneficial for several reasons. For example, S3 in Figure 4 shows that the arranging/rearranging feature provides a method to "determine [the] data packet flow to be transferred and its original and alternative data channels."

The Office, however, has not shown that Kadambi teaches or suggests the rearranging feature of claims 1 and 17. Indeed, while the Office argues that Kadambi's paragraph [0451] teaches that Kadambi's "first packet needs to be smaller than the second before the packet is determined to be a candidate for switching," the Office has not shown, nor does it appear that, Kadambi rearranges data packet flows in sequence according to data packet amount.

Additionally, independent claims 1 and 17 recite that the least data packet amount is selected by rearranging said data packet flows in sequence according to data packet amount. In other words, the data packet amounts of the data packet flows that co-exist at the same time are compared. As discussed above, the rearrangement of the data packet flows in sequence according to data packet amount aims to locate the data packet flow having the least data packet amount at that time. As previously stated, this feature is discussed in greater detail in paragraph [0031].

In contrast, according to Kadambi's paragraph [0451], which is cited by the Examiner to anticipate such a feature, and paragraphs [0444] and [0445], the number of bits in the *previous* packet and the number of bits in the *current* packet are compared. Additionally, while the Office points out that Kadambi's paragraph [0007] teaches determining a flow rate of the first frame and the second frame entering the link aggregation environment, and determining if the first frame and the second frame are candidates for link switching, the Office has not shown that Kadambi compares the data packet amount of co-existent data packet flows. Thus, Applicant respectfully submits that Kadambi does not anticipate claims 1 and 17.

Re claim 12

Claim 12 depends from claim 1 and, at least for that dependency, is patentable over Kadambi. Moreover, claim 12 recites additional features that the Office has not shown are taught or suggested by Kadambi. Specifically, claim 12 teaches the step of transmitting a broadcast data packet following said first data packet flow via said first data channel if said second data packet flow is determined to be transferred from said first data channel to a second data channel according to the comparing result. This transmitting of a broadcast data packet at the claimed time helps to ensure that "the transmission of said transferred data packet flow . . . [is] started at proper timing in order to assure . . . sequential accuracy."

The Office, however, has not shown that Kadambi teaches or suggest transmitting a broadcast data packet at the claimed time. Indeed, while the Office argues that Kadambi teaches a broadcast that identifies the port the packet should be sent to, the Office has not shown that Kadambi teaches sending such a packet at the claimed time. Accordingly, Applicant respectfully submits that Kadambi does not anticipate claim 12.

Re claims 2-4, 7-16, 18-20 and 21

Since claims 2-4 and 7-16 depend either directly or indirectly from claim 1 and claims 18-20 and 21 are dependent from claim 17, Applicant respectfully submits that these claims are not anticipated by Kadambi. Furthermore, since Vepa et al. fails to disclose all of the claim elements lacking in the Kadambi patent, Applicant respectfully submits that claim 4 would not have been obvious from the cited references.

New claim 22

New claim 22 recites additional features which are not disclosed in, or obviated by, the cited references. Specifically, claim 22 recites that the broadcast data packet flow of claim 12 comprises identifying code of the second data packet flow. ([0032]). As discussed above, this broadcast data packet helps the transmission of the transferred data packet flow to be started at proper timing.

In contrast, on page 9 of the Office Action, the Office points out that the broadcast in Kadambi “identifies the port the packet should be sent to.” Accordingly, the skilled artisan will recognize that broadcast data packet flow in claim 22, performs a different function than the broadcast mentioned in Kadambi. As a result, Applicant respectfully requests favourable review of new claim.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,

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The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-0843.
